

RBS and RUS, USDA

§ 4288.7

State, and local laws, including, but not limited to, the Equal Employment Opportunities Act, the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, 7 CFR Part 1901, subpart E, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. Applicants must submit and will be subject to pre-award and post award compliance reviews with the terms and conditions set forth in Form RD 400-1, "Equal Opportunity Agreement" and Form RD 400-4, "Assurance Agreement."

§ 4288.5 Oversight, monitoring, and reporting requirements.

(a) *Verification.* The Agency reserves the right to verify all payment requests and subsequent payments made under this program, including field visits, as frequently as necessary to ensure the integrity of the program. Documentation provided will be used to verify, reconcile, and enforce the payment terms of Form RD 4288-5, "Repowering Assistance Program—Agreement," along with any potential refunds that the recipient will be required to make should they fail to adequately document their request.

(b) *Records.* (1) For purposes of verifying the eligible project costs supporting payments under this subpart, each biorefinery must maintain in one place such books, documents, papers, receipts, payroll records and bills of sale adequate to identify the purposes for which, and the manner in which funds were expended for eligible project costs. The biorefinery must maintain copies of all documents submitted to the Agency in connection with payments made hereunder. These records must be available at all reasonable times for examination by the Agency and must be held and be available for Agency examination for a period of not less than 3 years from the final payment date.

(2) For the purpose of verifying compliance with the fossil fuel reduction and energy production requirements of this subpart, each biorefinery must make available and provide for the metering of all power and heat producing boilers, containment vessels, generators and any other equipment related to the production of heat or power re-

quired to displace fossil fuel loads with renewable biomass. These records must be held in one place and be available at all reasonable times for examination by the Agency. Such records include all books, papers, contracts, scale tickets, settlement sheets, invoices, and any other documents related to the program that are within the control of the biorefinery. These records must be held and made available for Agency examination for a period of not less than 3 years from the date the repowering project becomes operational.

(c) *Reporting.* Upon completion of the repowering project, the biorefinery must submit a report using Form RD 4288-6, "Repowering Assistance Programs—Reporting Form," to the Agency annually for the first 3 years after completion of the project. The reports are to be submitted as of October 1 of each year. The report must include the items specified in paragraphs (c)(1) and (c)(2) of this section.

(1) Documentation regarding the usage and production of energy at the biorefinery during the previous year, including both the previous and current fossil fuel load and the renewable biomass energy production.

(i) Metered data documenting the production of heat, steam, gas and power must be obtained utilizing an Agency approved measurement device.

(ii) Metered data must be verifiable and subject to independent calibration testing.

(2) Current utility billing data, identifying metered loads, from the base energy use period.

§ 4288.6 Forms, regulations, and instructions.

Copies of all forms, regulations, instructions, and other materials related to this program may be obtained from the USDA Rural Development State Office, Renewable Energy Coordinator and the USDA Rural Development Web site at <http://www.rurdev.usda.gov/regs/>.

§ 4288.7 Exception authority.

The Administrator of the Agency ("Administrator") may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or

provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal government's interest.

§§ 4288.8–4288.9 [Reserved]

§ 4288.10 Applicant eligibility.

(a) *Eligible projects.* To be eligible for this program, the applicant must be an eligible biorefinery utilizing only renewable biomass for replacement fuel, and must meet the requirements specified in paragraphs (a)(1) through (a)(5) of this section.

(1) *Timely complete application submission.* To be eligible for this program, the applicant must submit a complete application within the application period. Projects will be selected based on ranking which is derived from the application of the selection criteria stated in § 4288.21.

(2) *Multiple biorefineries.* Corporations and entities with more than one biorefinery can submit an application for only one of their biorefineries. However, if a corporation or entity has multiple biorefineries located at the same location, the entity may submit an application that covers such biorefineries provided the heat and power used in the multiple biorefineries are centrally produced.

(3) *Cost-effectiveness.* The application must be awarded at least minimum points for cost-effectiveness under § 4288.21(b)(1).

(4) *Percentage of reduction of fossil fuel use.* The application must be awarded at least minimum points for percentage of reduction of fossil fuel use under § 4288.21(b)(2).

(5) *Full project financing.* The applicant must demonstrate that it has sufficient funds or has obtained commitments for sufficient funds to complete the repowering project taking into account the amount of the payment request in the application.

(b) *Ineligible projects.* A project is not eligible under this subpart if it is using feedstocks for repowering that are feed grain commodities that received benefits under Title I of the Food, Conservation, and Energy Act of 2008.

§ 4288.11 Eligible project costs.

Eligible project costs will be only for project related construction costs for repowering improvements associated with the equipment, installation, engineering, design, site plans, associated professional fees, permits and financing fees.

§ 4288.12 Ineligible project costs.

Any project costs incurred by the applicant prior to application for payment assistance under this program will be ineligible for payment assistance.

§ 4288.13 Payment information.

(a) *Maximum payment.* For purposes of this program, the maximum payment an applicant may receive will be 50 percent of total eligible project costs up to the applicable fiscal year's maximum award as announced in an annual FEDERAL REGISTER notice. There is no minimum payment to an applicant.

(b) *Reimbursement payments.* The Agency shall only make payments based on the biorefinery's expenditures on eligible project costs. Payments shall be determined by multiplying the amount of eligible expenditures stated on the payment request by a percentage obtained by dividing the aggregate payment award by total eligible project costs.

(c) *Timing of payments.* The Applicant may request payments not more frequently than once a month by submitting an original, completed, validly signed Standard Form (SF) 271, "Outlay Report and Request for Reimbursement for Construction Programs" including the supporting documentation identified in § 4288.23, to reimburse the applicant for the Agency's pro rata share of funds expended on eligible project costs. The Agency shall make such payments until 90 percent of the total payment award has been expended. The final 10 percent of the payment award will be paid upon completion of the repowering project and satisfactory evidence has been received by the Agency demonstrating that the biorefinery is operating as described in the Agency approved application.